UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

MARY ANN SMITH	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No: 2:16-cv-00344
	)	
DOLLAR TREE STORES, INC.,	)	
a Virginia Corporation	)	
Defendant.	)	

ANSWER TO COMPLAINT

COMES NOW Defendant, Dollar Tree Stores, Inc., by counsel, Edward W. Hearn of JOHNSON & BELL, P.C., and for its Answer to Plaintiff's Complaint, states as follows:

1. That the defendant, Dollar Tree Stores, Inc., is a corporation organized under the laws of a state other than the State of Indiana and is organized to do business within the State of Indiana.

ANSWER: Defendant admits the allegations contained in rhetorical paragraph 1 of Plaintiff's Complaint.

2. On September 5, 2014, the defendant was the owner/operator and had exclusive control of the business establishment known as Dollar Tree Store #2466 located at 295 W. 81st Avenue in Merrillville, Lake County, Indiana and transacted business with the public.

ANSWER: Defendant is without sufficient information to either admit or deny the allegations contained in rhetorical paragraph 2 of Plaintiff's Complaint.

3. On that date and at that place, the plaintiff was a business invitee in and upon the defendant's business premises and slipped and/or tripped and fell over objects that the defendant

negligently and carelessly allowed to remain on the floor directly near the entrance of the store causing the plaintiff to incur serious and permanent personal injuries.

ANSWER: Defendant is without sufficient information to either admit or deny the allegations contained in rhetorical paragraph 3 of Plaintiff's Complaint.

4. The plaintiff's injuries were proximately caused due to the negligent acts and omissions of the defendant in failing to keep his premises reasonably safe for the plaintiff who was business invitee.

ANSWER: Defendant denies the allegations contained in rhetorical paragraph 4 of Plaintiff's Complaint.

5. That as a direct and proximate result of the negligence of the defendant, the plaintiff incurred serious and permanent personal injuries; plaintiff has suffered pain in the past and will suffer pain in the future; plaintiff has incurred medical expenses and will incur medical expenses in the future.

ANSWER: Defendant denies the allegations contained in rhetorical paragraph 5 of Plaintiff's Complaint.

WHEREFORE, Defendant, Dollar Tree Stores, Inc., prays that the Plaintiff take nothing by the Complaint, for judgment in favor of Defendant and against the Plaintiff, and for all other just and proper relief in the premises.

LEGAL PARAGRAPH I

COMES NOW Defendant, by counsel, and for Affirmative Defense of Answer to Plaintiff's Complaint, state as follows:

1. That any allegations in Plaintiff's Complaint contained, not hereinbefore specifically admitted or denied, are now specifically denied.

WHEREFORE, Defendant prays that the Plaintiff take nothing by the Complaint, for Judgment in favor of Defendant and against the Plaintiff, and for all other just and proper relief in the premises.

LEGAL PARAGRAPH II

COMES NOW Defendant, by counsel, and for Affirmative Defense of Answer to Plaintiff's Complaint, state as follows:

1. Defendant denies the proximate cause of the incident as set out in the Plaintiff's Complaint for Damages, and any alleged injuries or damages claimed by the Plaintiff.

WHEREFORE, Defendant prays that the Plaintiff take nothing by the Complaint, for Judgment in favor of Defendant and against the Plaintiff, and for all other just and proper relief in the premises.

LEGAL PARAGRAPH III

COMES NOW Defendant, by counsel, and for Affirmative Defense of Answer to Plaintiff's Complaint, state as follows:

1. Defendant hereby reserves any and all rights Defendant may have to raise additional affirmative defenses that may be developed through the course of discovery in this litigation, or by any change in the law.

WHEREFORE, Defendant prays that the Plaintiff take nothing by the Complaint, for Judgment in favor of Defendant and against the Plaintiff, and for all other just and proper relief in the premises.

LEGAL PARAGRAPH IV

COMES NOW Defendant, by counsel, and for Affirmative Defense of Answer to Plaintiff's Complaint, state as follows:

1. The fault of the Plaintiff was the sole proximate cause of the injuries and damages claimed in Plaintiff Complaint.

2. Only the Plaintiff is at fault in causing the claimed injuries and damages, if any.

3. Plaintiff's fault includes Plaintiff negligence, incurred risk, assumed risk, failure to avoid injury, and other conduct constituting "fault" under the Indiana Comparative Fault Act.

WHEREFORE, Defendant prays that the Plaintiff take nothing by the Complaint, for Judgment in favor of Defendant and against the Plaintiff, and for all other just and proper relief in the premises.

LEGAL PARAGRAPH V

COMES NOW Defendant, by counsel, and for Affirmative Defense of Answer to Plaintiff's Complaint, state as follows:

1. Plaintiff is at fault in causing and in contributing to cause Plaintiff's claimed injuries and damages, if any.

2. Plaintiff's contributory fault includes Plaintiff's negligence, incurred risk, assumed risk, failure to avoid injury, and other conduct constituting "fault" under the Indiana Comparative Fault Act.

3. Plaintiff's contributory fault is greater than the fault of all persons whose fault allegedly proximately contributed to the Plaintiff claimed injuries, if any.

4. Plaintiff's own fault is greater than fifty (50%) percent of the total fault involved in the incident referred to in Plaintiff's Complaint.

WHEREFORE, Defendant prays that the Plaintiff take nothing by the Complaint, for Judgment in favor of Defendant and against the Plaintiff, and for all other just and proper relief in the premises.

LEGAL PARAGRAPH VI

COMES NOW Defendant, by counsel, and for Affirmative Defense of Answer to Plaintiff's Complaint, state as follows:

1. Plaintiff is at fault in causing and in contributing to cause Plaintiff's claimed injuries and damages, if any.

2. Plaintiff's contributory fault includes Plaintiff's negligence, incurred risk, assumed risk, failure to avoid injury, and other conduct constituting "fault" under the Indiana Comparative Fault Act.

3. Any compensatory damages claimed by the Plaintiff must be diminished by the percentage or proportion that Plaintiff fault bears to the total fault involved in the incident.

WHEREFORE, Defendant pray that the Plaintiff take nothing by the Complaint or that: in the event the trier of fact determines Plaintiff is entitled to any compensatory damages, Defendant pray that the award to the Plaintiff be reduced and diminished in proportion to the percentage that the Plaintiff's fault bears to the total fault involved in the incident, and for all other just and proper relief in the premises.

LEGAL PARAGRAPH VII

COMES NOW Defendant, by counsel, and for Affirmative Defense of Answer to Plaintiff's Complaint, state as follows:

1. That the injuries and/or damages alleged by the Plaintiff as set forth in the Complaint were the sole and proximate result of the negligence, carelessness and/or the fault of a third-party or third-parties and/or of the other Defendant, over which Defendant had no control or right to control.

WHEREFORE, Defendant prays that the Plaintiff take nothing by the Complaint, for Judgment in favor of Defendant or that: in the event the trier of fact determines the Plaintiff is entitled to any compensatory damages, Defendant prays that the Court apportion fault among all of the parties or to any nonparties, and reduce any award in favor of the Plaintiff, and against the Defendant, pursuant to the Indiana Comparative Fault Act, and for all other just and proper relief in the premises.

LEGAL PARAGRAPH VIII

COMES NOW Defendant, by counsel, and for Affirmative Defense of Answer to Plaintiff's Complaint, state as follows:

1. Plaintiff's claimed injuries and damages, if any, were caused by an open and obvious danger.

2. Defendant had no duty toward the Plaintiff with respect to such open and obvious danger.

3. Defendant cannot be charged with liability based upon alleged fault where Plaintiff's claim injury and/or damage arising from an encounter with an open and obvious danger.

WHEREFORE, Defendant prays that the Plaintiff take nothing by the Complaint, for Judgment in favor of Defendant and against the Plaintiff, and for all other just and proper relief in the premises.

LEGAL PARAGRAPH IX

COMES NOW Defendant, by counsel, and for Affirmative Defense of Answer to Plaintiff's Complaint, state as follows:

1. That before and at the time and place of the occurrence complained of in Plaintiff's Complaint, the Plaintiff well knew of all of the risks and dangers necessarily incident to the pursuit in which Plaintiff's engaged, and did well and fully know all of the conditions which existed at the time and before the place of the occurrence mentioned herein, and by reason thereof, the Plaintiff incurred all the risks, hazards, and dangers of the mission which were present at the time of the occurrence mentioned in Plaintiff's Complaint, and any injuries sustained by the Plaintiff on the date in question were the result of hazards, risks, and dangers which the said Plaintiff did voluntarily assume, and were known and incurred by the Plaintiff at the time and place mentioned in Plaintiff's Complaint, and by reason thereof, said Plaintiff are not entitled to recover herein.

WHEREFORE, Defendant pray that the Plaintiff take nothing by the Complaint, for judgment in favor of Defendant and against the Plaintiff, and for all other just and proper relief in the premises.

JURY DEMAND

COMES NOW Defendant, Dollar Tree Stores, Inc., by counsel, Edward W. Hearn of JOHNSON & BELL, P.C., and demands trial by jury as to all issues of fact.

Respectfully submitted,

JOHNSON & BELL, P.C.

By: /s/ Edward W. Hearn

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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2016, I have electronically filed the foregoing with the Clerk of the Court using CM/ECF system and sent notification of such filing to the all counsel of record.

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/s/ Edward W. Hearn